

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

OSTERHAUS PHARMACY, INC.,
CAMMACK'S PHARMACIES INC., DBA
JIM'S PHARMACY AND HOME HEALTH,
HARBOR DRUG CO., INC., VALU DRUGS
INC., SMITH'S PHARMACY II, INC., DBA
SMITH'S PHARMACY, REDNER'S
MARKETS, INC., and OLD BALTIMORE
PIKE APOTHECARY, INC., T/A
SOUTHERN CHESTER COUNTY
PHARMACY, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

EXPRESS SCRIPTS, INC. and
EVERNORTH HEALTH, INC., formerly
known as Express Scripts Holding Company,

Defendants.

NO. 2:24-CV-00039-RAJ

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY IN
SUPPORT OF PLAINTIFFS'
RESPONSE TO DEFENDANTS'
MOTION TO TRANSFER CASE OR,
IN THE ALTERATIVE, DISMISS OR
STRIKE THE COMPLAINT**

Pursuant to Local Rule 7(n), Plaintiffs respectfully submit this Notice of Supplemental Authority, and in support thereof state as follows:

1. Pending before the Court is Defendants' Motion to Transfer Case or, in the Alternative, Dismiss or Strike the Complaint (ECF No. 77, the "Motion"). Plaintiffs' last brief was filed on June 21, 2024 (ECF No. 82), and the Motion was fully briefed when Defendants filed their reply on July 22, 2024 (ECF No. 83). The Court has not ruled on the Motion, making this Notice of Supplemental Authority timely.

2. On January 17, 2025, an Arbitrator for the American Arbitration Association's Commercial Arbitration Tribunal issued an Interim Award on the Merits in the matter captioned *AIDS Healthcare Foundation v. Prime Therapeutics LLC*, AAA Matter No. 01-22-0000-2756. A copy of the Interim Award on the Merits is submitted herewith as **Exhibit A**.

3. In connection with the Interim Award on the Merits, the AIDS Healthcare Foundation alleged the same claim (*i.e.*, violation of Sherman Act § 1 through a horizontal price-fixing agreement), arising from the same agreement (*i.e.*, an agreement between ESI and Prime), alleged in Plaintiffs' Complaint in this case. (Ex. A at 2.)

4. Because the Interim Award on the Merits totals 45 pages, Plaintiffs would respectfully direct the Court's attention to the Arbitrator's findings and conclusions as set forth on pages 3-5, 15, 18-21, 41, and 43.

5. Pursuant to Local Rule 7(n), Plaintiffs submit this explanation and authority without argument. Plaintiffs are prepared to provide further explanation of this supplemental authority upon request.

WHEREFORE, for the reasons stated herein, Plaintiffs respectfully submit this Notice of Supplemental Authority in support of their Response to Defendants' Motion to Transfer Case or, in the Alternative, Dismiss or Strike the Complaint.

1 RESPECTFULLY SUBMITTED AND DATED this 24th day of January, 2025.

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